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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 83 of 1999

in

SPECIAL CIVIL APPLICATION No 6616 of 1998

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR CK THAKKER and  
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements?-Yes.

2. To be referred to the Reporter or not?-No.

3. Whether Their Lordships wish to see the fair copy  
of the judgement?-No.

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil  
Judge?-No.

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BHADRESH FAKIRCHAND SHAH

Versus

KISHOREBHAI BHAGUBHAI  
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Appearance:

MR KK TRIVEDI for Appellants

MR BM MANGUKIYA for Respondent No. 1 to 4

Mr.Pancholi, Assistant GOVERNMENT PLEADER,  
for Respondent No. 5

MR NK MAJMUDAR for Respondent No. 7  
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CORAM : ACTING CHIEF JUSTICE MR CK THAKKER and

Date of decision: 04/03/99

ORAL JUDGEMENT: (Per C.K. Thakkar, Acting C.J.)

Admitted. Mr.B.M. Mangukia appears and waives service of notice of admission on behalf of respondents 1 to 4, Mr.Pancholi, AGP, appears and waives service of notice of admission for respondents 5 and 6 and Mr.N.K. Majmudar appears and waives service of notice of admission for respondent No.7. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is directed against an order passed by the learned Single Judge on November 23, 1998. While disposing of the petition, the learned Single Judge issued the following two directions :-

- " (1) The impugned order passed by the learned Special Secretary, Revenue shall not be treated as adversely affecting the rights of the parties to the aforesaid two civil suits.
- (2) The parties to both these petitions will maintain status quo qua property in question till any one of them moves the concerned civil court for appropriate orders with regard to dealing of the property in question. "

It may be stated that two Special Civil Applications came to be filed, which came up for hearing before the learned Single Judge, being Special Civil Application Nos. 5936 of 1998 and 6616 of 1998 (in which the present Letters Patent Appeal is filed).

We have heard the learned counsel for the parties. Mr.K.K. Trivedi, learned counsel for the appellants, fairly stated that so far as direction No.1 is concerned, he has no objection and he has no grievance. Regarding direction No.2, however, he has contended that since the petition was disposed of by discharging rule, it was not open to the learned Single Judge to direct maintenance of status quo by the parties "till any one of them moves the concerned civil court for appropriate orders with regard to dealing of the property in question". The counsel contended that when the learned Single Judge discharged Rule and did not think it appropriate to decide the controversy raised in the

petition, he ought not to have passed order of maintenance of status quo and that too, till any one of the parties moves civil court.

Relying on a decision of the Honourable Supreme Court in State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12, he contended that when the Court is satisfied that the party was not entitled to a relief under Article 226 of the Constitution and that the petitioners were not granted reliefs prayed in the petition, it was not open to the Court to continue interim relief so as to enable to serve notice to the Government under Section 80 of the Code of Civil Procedure and in the meanwhile grant interim relief with a view to enabling him to get an appropriate order from a civil court.

In the instant case, according to Mr.Trivedi, the learned Single Judge has gone even further and has directed maintenance of status quo till any one of the parties moves the Civil Court. He, therefore, submitted that the order deserves to be interfered with. On merits also, a number of contentions were raised by the learned counsel.

On the other hand, Mr.Mangukia supported the order passed by the learned Single Judge. According to him, the order is discretionary in nature and, hence, does not require interference. He further submitted that there was suppression of material facts and misstatement by the present appellants in a petition filed by them earlier as also in the affidavit-in-reply in Special Civil Application No.6616 of 1998.

Relying on a decision of the Apex Court in S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. and others, JT 1993(6) SC 331, he contended that the Court may not exercise power in favour of the present appellants. He also submitted that on merits, the appellants have no case whatsoever.

In the facts and circumstances of the case, in our opinion, the learned Single Judge should not have directed maintenance of status quo as issued in direction No.2. When the petition was disposed of and rule was discharged, the said direction cannot be said to be in accordance with law. On that ground alone and without observing anything on merits of the matter, the Letters Patent Appeal deserves to be allowed and is accordingly allowed to that extent. No order as to costs.

We may state that as we are not entering into the

merits of the matter, it is open to all the parties to raise all contentions available to them in law in an appropriate proceeding as and when such questions are raised before the authorities / courts.

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(apj)